IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA.No. 1177 of 2007()

AGAINST THE JUDGEMENT IN WPC.13779/2007 Dated 24/04/2007
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APPELLANT: RESPONDENTS IN THE W.P.
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1. THE DISTRICT COLLECTOR, KOTTAYAM.

2. THE DISTRICT SUPPLY OFFICER,
KOTTAYAM.

3. THE TALUK SUPPLY OFFICER,
CHANGANACHERRY, KOTTAYAM DISTRICT.

4. THE SUB INSPECTOR OF POLICE,
CHANGANACHERRY, KOTTAYAM DISTRICT.

BY SR. GOVERNMENT PLEADER SHRI NOBLE MATHEW

RESPONDENTS: PETITIONER IN THE O.P.

NIRADEEPAM ROLLER FLOUR MILLS, THURUTHY P.O., CHANGANACHERRY, KOTTAYAM DISTRICT, PIN-686 635, REP. BY ITS MANAGING PARTNER,P.M.SHAJI, S/O.P.V.FRANCIS, RESIDING AT PULICKAL, INDUSTRIAL NAGAR P.O., CHANGANACHERRY, KOTTAYAM DISTRICT, PIN-686 106.

BY ADV. SRI.P.N.RAVINDRAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.1177 of 2007

Dated, this the 4th day of June, 2007

JUDGMENT

K.T.Sankaran, J.

The respondents in W.P.(C) No.13779/2007 are the appellants in this writ appeal. The respondents herein filed the writ petition for the following relief:

> "issue a writ in the nature of mandamus or any other appropriate writ, order, commanding the respondents to provisionally release the wheat seized as per Ext.P1 mahazar to the petitioner firm on the petitioner firm depositing the control price fixed for ration wheat sold through ration shops in the State of Kerala, subject to the final outcome of the proceedings to be initiated under S.6A of the Essential commodities Act, 1955."

2. The writ petitioner is a partnership firm having business in Changanacherry taluk, Kottayam District. It is stated in the writ petition that the petitioner firm regularly purchases wheat from various dealers and from open market. On 20.4.2007 the Taluk Supply Officer, Changanacherry along with other officials inspected the business premises of the petitioner and seized 234610 kgs of wheat. Ext.P1 mahazar was prepared. Ext.P1 would indicate that the wheat is intended for supply through public distribution system. There is no challenge in the writ petition against the contents of Ext.P1. If the contents of Ext.P1 are accepted as correct, it is clear that the seized wheat is not a commodity which would be available in open market, but it would be available only through public distribution system.

3. The learned Single Judge disposed of the writ petition itself directing the release of the wheat to the petitioner after realising the wholesale market price as fixed by the 1st respondent in the writ petition viz. The District Collector. There was a direction to release the goods within a period of two weeks.

4. Learned Government Pleader appearing for the appellant would submit that the order passed by the learned Single Judge is contrary to the provisions of the Essential Commodities Act. He invited our attention to sec.6A of the Essential Commodities Act. Sub-sec.(2) of sec.6A reads as follows:

> "Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may-
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> (i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force; or
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> (ii) where no such price is fixed, order the same to be sold by public auction."

5. A statement is filed on behalf of the respondents wherein it is mentioned that control price was fixed under the Kerala Rationing Order 1966 for the commodity in question. The State Government supplies rice, wheat,

sugar etc. through Civil Supplies Department at reduced rate for distribution to the poor people of the State through the public distribution system. It is stated that the wheat in question is intended to be distributed through the public distribution system and it is intended for supply to the people below the poverty line. It is stated in the counter affidavit that the District Collector has no other way than to sell the seized articles at the controlled price to ration card holders through fair price shop/ration shops.

In the facts and circumstances of the case, we are of the view that the writ petitioner is not entitled to get release of the wheat in question. The decision of the Hon'ble Supreme Court in ***Shambhu Dayal Agarwala v. State of West Bengal - (1990) 3 SCC 549*** would fortify our conclusion. We allow the writ appeal, set aside the judgment passed by the learned Single Judge and dismiss the writ petition.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

mt/-